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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,209	07/12/2002	Masahiro Sakanaka	57094 (71526)	9390

21874 7590 10/22/2003

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BOSTON, MA 02209

EXAMINER
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PATTEN, PATRICIA A

ART UNIT	PAPER NUMBER
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1654

DATE MAILED: 10/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/070,209

Applicant(s)

SAKANAKA ET AL.

Examiner

Patricia A Patten

Art Unit

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 94-96 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 94-96 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 February 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### **DETAILED ACTION**

Claims 94-96 are pending in the application.

Applicant's election of Group VII as well as the species of 'ginseng components' in the response of 9/12/03 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 94-96 were examined on the merits.

### ***Specification***

The disclosure is objected to because it does not appear that the disclosure contains a Brief Description of the Drawings. Applicants are asked to submit a Brief Description of the Drawings in accordance with 37 CFR 1.74 which does not introduce new matter into the disclosure.

This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

***Priority***

This lacks the necessary reference to the prior application. A statement reading "This is a 371 of Application No. PCT/JP00/04102, filed 6/22/2000 which claims priority to JP 11-24 3378 filed in Japan on 08/30/1999" should be entered following the title of the invention or as the first sentence of the specification. Also, the current status of the parent nonprovisional application(s) should be included.

***Information Disclosure Statement***

The IDS submitted 2/28/02 was accompanied by a PTO-1449 form. However, this form did not include the title of the references, or the authors. In order for the Examiner to initial this form and consider all of the references, Applicants are asked to submit a new PTO-1449 which includes the titles of the references as well as the authors. This is necessary in order to properly bibliograph the documents upon printing.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 94-96 are rejected under 35 U.S.C. 102(b) as being anticipated by Arikhbaieff (FR 2,648,046). Claims 94-96 are drawn to a method for treating a mammal suffering from or susceptible to a disease causing apoptosis or apoptosis-like cell death with ginseng components. Claims are further drawn to wherein the ginseng components comprise non-saponin fractions for example, and wherein the ginseng is red ginseng.

Arikhbaieff (FR 2,648,046) disclosed a method for enhancing immune function via the administration of a beverage which included red ginseng comprising saponins (English Abstract). The term 'disease' was given its broadest interpretation, and it is deemed that immune dysfunction is a 'disease'. Because the only step in the method is administration of a composition comprising a ginseng component, it is deemed that administration of the composition disclosed by Arikhbaieff would have inherently performed this mechanism because it is the same composition given to the same group of patients. Further, it is pointed out that the phrase '...or susceptible to a disease causing apoptosis' can be drawn to *anyone*, because anyone is *susceptible* to diseases which cause apoptosis.

No Claims are allowed.

Art Unit: 1654

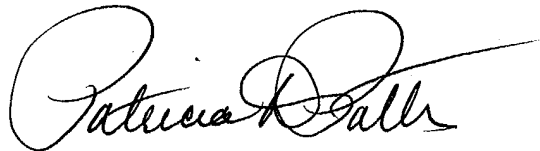
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia A Patten whose telephone number is (703) 308-1189. The examiner can normally be reached on 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback can be reached on (703) 306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Patricia A Patten  
Examiner  
Art Unit 1654

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A handwritten signature in cursive script, reading "Patricia A. Patten".

PATRICIA PATTEN  
PATENT EXAMINER